

Case Nos. 24-1538, 24-1826

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

JACKIEASLICK LLC, JE CORPORATE LLC,
Plaintiffs-Appellants,

v.

ACCENCYC US,
Defendant-Appellee,

CJ EMERALD, ET AL.,
Defendants.

Appeal from the United States District Court for
the Western District of Pennsylvania
Case No. 23-cv-2000-WSS—Judge William S. Stickman IV

**MOTION FOR LEAVE TO FILE BRIEF OF LAW PROFESSORS SARAH
FACKRELL, ERIC GOLDMAN, ELIZABETH ROSENBLATT, AND
SAURABH VISHNUBHAKAT AS *AMICI CURIAE* IN SUPPORT OF
DEFENDANT-APPELLEE AND AFFIRMANCE**

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CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rules 29(a) and 47.4, counsel for *amici curiae* intellectual property law professors certifies that:

1. The full names of the *amici curiae* I represent are: *amici curiae* intellectual property law professors Sarah Fackrell, Eric Goldman, Elizabeth Rosenblatt, and Saurabh Vishnubhakat.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) I represent is: N/A.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the *amici curiae* I represent are: None.

4. The names of all law firms and the partners or associates that appeared before the originating court for the *amici curiae* I represent or are expected to appear in this Court (and who have not or will not enter an appearance in this case) are: None.

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this Court's decision in the pending appeal: None.

6. All information required by Federal Rules of Appellate Procedure 26.1(b) and 26.1(c) that identifies organizational victims in criminal cases and debtors and trustees in bankruptcy cases is: None.

February 6, 2025

/s/ Phillip R. Malone

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MOTION FOR LEAVE TO FILE

Amici professors Sarah Fackrell (who previously published under the name Sarah Burstein), Eric Goldman, Elizabeth Rosenblatt, and Saurabh Vishnubhakat, respectfully move for leave to file a brief in support of Appellee in this appeal, pursuant to Federal Rule of Appellate Procedure 29(a)(2) and (a)(3). The brief is being tendered herewith. All parties have received notice of the filing of this brief. Counsel for Appellee AccEncyc US consents to the filing; counsel for Appellants Jacki Easlick LLC, JE Corporate LLC, indicated, after multiple requests over a seven-day period, that they are unable to state a position on the filing of the brief.

Amici are professors of intellectual property law who regularly write and teach about design patents, utility patents, and intellectual property generally. *Amici* have also studied and written about the phenomenon of so-called “Schedule A” mass-defendant intellectual property litigation like that pursued in this case. *See, e.g.*, Sarah Fackrell, *The Counterfeit Sham*, 138 HARV. L. REV. 471 (2025); Eric Goldman, *A SAD Scheme of Abusive Intellectual Property Litigation*, 123 COLUM. L. REV. F. 183 (2023). *Amici* have no personal or financial interest in the outcome of this case. Rather, *amici* write from their broader perspectives on design patent infringement and on the abusive and legally flawed nature of Schedule A litigation, particularly in patent cases like this one.

The proposed *amici* brief satisfies the requirements of Federal Rule of

Appellate Procedure 29(a)(3) because the brief is desirable and asserts matters relevant to the disposition of this case. The proposed brief explains why the district court did not abuse its discretion in finding that Appellants had failed to meet their burden of showing they are likely to succeed on the merits by showing likelihood of infringement and irreparable harm, and why that decision should be affirmed.

The proposed brief also provides important context for and explains the broader impact and far-reaching consequences of this case. The brief describes the procedural and legal defects that occurred in this case and how those defects are common to the mass-defendant “Schedule A” model of litigation, of which this case is just one example. Schedule A litigation has exploded in frequency over the last few years: Between 2020 and 2022 alone, estimates suggest over 2,000 such cases were filed in several districts that swept in as many as several hundred thousand defendants. And these cases increasingly assert patent claims. The proposed brief explains how the Schedule A litigation abuses are particularly egregious in patent cases, for which this litigation model is especially ill-suited, and how the abuses can harm defendants, competition and consumers.

The proposed brief explains that Schedule A cases rarely reach the appellate stage and that this case therefore presents a rare opportunity for this Court, in the course of evaluating the litigation and decision below, to consider and address the abuses of the Schedule A litigation model in patent cases.

Given the importance of the context of the litigation in this case, and the broader impact and implications of the Schedule A litigation model pursued here, *amici* respectfully request leave to file their brief to ensure full consideration of the procedural and legal issues and the impact of those issues on defendants in hundreds or thousands of other patent cases, as well as on competition and consumers.

February 6, 2025

Respectfully submitted,

By: /s/ Phillip R. Malone

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2025, I caused the foregoing MOTION FOR LEAVE TO FILE BRIEF OF LAW PROFESSORS SARAH FACKRELL, ERIC GOLDMAN, ELIZABETH ROSENBLATT, AND ERIC GOLDMAN AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE to be served by electronic means via the Court's CM/ECF system on all counsel registered to receive electronic notices.

February 6, 2025

/s/ Phillip R. Malone

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